

Exhibit S

to

Declaration of George F. Carpinello

26 CFR § 1.221-1 - Deduction for interest paid on qualified education loans after December 31, 2001.

CFR Table of Popular Names

§ 1.221-1 Deduction for interest paid on qualified education loans after December 31, 2001.

(a) *In general* -

(1) *Applicability.* Under section 221, an individual taxpayer may deduct from gross income certain interest paid by the taxpayer during the taxable year on a qualified education loan. See paragraph (b)(4) of this section for rules on payments of interest by third parties. The rules of this section are applicable to periods governed by section 221 as amended in 2001, which relates to deductions for interest paid on qualified education loans after December 31, 2001, in taxable years ending after December 31, 2001, and on or before December 31, 2010. For rules applicable to interest due and paid on qualified education loans after January 21, 1999, if paid before January 1, 2002, see § 1.221-2. Taxpayers also may apply § 1.221-2 to interest due and paid on qualified education loans after December 31, 1997, but before January 21, 1999. To the extent that the effective date limitation (sunset) of the 2001 amendment remains in force unchanged, section 221 before amendment in 2001, to which § 1.221-2 relates, also applies to interest due and paid on qualified education loans in taxable years beginning after December 31, 2010.

(2) *Example.* The following example illustrates the rules of this paragraph (a). In the example, assume that the institution the student attends is an eligible educational institution, the loan is a qualified education loan, the student is legally obligated to make interest payments under the terms of the loan, and any other applicable requirements, if not otherwise specified, are fulfilled. The example is as follows:

EXAMPLE. EFFECTIVE DATES.

Student A begins to make monthly interest payments on her loan beginning January 1, 1997. Student A continues to make interest payments in a timely fashion. However, under the effective date provisions of section 221, no deduction is allowed for interest Student A pays prior to January 1, 1998. Student A may deduct interest due and paid on the loan after December 31, 1997. Student A may apply the rules of § 1.221-2 to interest due and paid during the period beginning January 1, 1998, and ending January 20, 1999. Interest due and paid during the period January 21, 1999, and ending December 31, 2001, is deductible under the rules of §

[1.221-2](#), and interest paid after December 31, 2001, is deductible under the rules of this section.

(b) Eligibility -

(1) Taxpayer must have a legal obligation to make interest

payments. A [taxpayer](#) is entitled to a deduction under section 221 only if the [taxpayer](#) has a legal [obligation](#) to make [interest payments](#) under the [terms](#) of the qualified education loan.

(2) Claimed dependents not eligible -

(i) In general. An individual is not entitled to a deduction under section 221 for a [taxable year](#) if the individual is a [dependent](#) (as [defined](#) in section 152) for whom another [taxpayer](#) is [allowed](#) a deduction under section 151 on a Federal [income](#) tax return for the same [taxable year](#) (or, in the case of a fiscal [year taxpayer](#), the [taxable year](#) beginning in the same calendar [year](#) as the individual's taxable year).

(ii) Examples. The following [examples](#) illustrate the [rules](#) of this paragraph (b)(2):

EXAMPLE 1. STUDENT NOT CLAIMED AS DEPENDENT.

Student B pays \$750 of interest on qualified education loans during 2003. Student B's parents are not allowed a deduction for her as a dependent for 2003. Assuming fulfillment of all other relevant requirements, Student B may deduct under section 221 the \$750 of interest paid in 2003.

EXAMPLE 2. STUDENT CLAIMED AS DEPENDENT.

Student C pays \$750 of interest on qualified education loans during 2003. Only Student C has the legal obligation to make the payments. Student C's parent claims him as a dependent and is allowed a deduction under section 151 with respect to Student C in computing the parent's 2003 Federal income tax. Student C is not entitled to a deduction under section 221 for the \$750 of interest paid in 2003. Because Student C's parent was not legally obligated to make the payments, Student C's parent also is not entitled to a deduction for the interest.

(3) Married taxpayers. If a [taxpayer](#) is married as of the close of a [taxable year](#), he or she is entitled to a deduction under this section only if the [taxpayer](#) and the [taxpayer's spouse](#) file a joint return for that [taxable year](#).

(4) Payments of interest by a third party -

(i) In general. If a third party who is not legally obligated to make a [payment](#) of [interest](#) on a qualified education loan makes a [payment](#) of [interest](#) on behalf of a [taxpayer](#) who is legally obligated to make the [payment](#), then the [taxpayer](#) is treated as receiving the [payment](#) from the third party and, in turn, paying the [interest](#).

(ii) Examples. The following [examples](#) illustrate the [rules](#) of this paragraph (b)(4):

EXAMPLE 1. PAYMENT BY EMPLOYER.

Student D obtains a qualified education loan to attend college. Upon Student D's graduation from college, Student D works as an intern for a non-profit organization during which time Student D's loan is in deferment and Student D makes no interest payments. As part of the internship program, the non-profit organization makes an interest payment on behalf of Student D after the deferment period. This payment is not excluded from Student D's income under section 108(f) and is treated as additional compensation includible in Student D's gross income. Assuming fulfillment of all other requirements of section 221, Student D may deduct this payment of interest for Federal income tax purposes.

EXAMPLE 2. PAYMENT BY PARENT.

Student E obtains a qualified education loan to attend college. Upon graduation from college, Student E makes legally required monthly payments of principal and interest. Student E's mother makes a required monthly payment of interest as a gift to Student E. A deduction for Student E as a dependent is not allowed on another taxpayer's tax return for that taxable year. Assuming fulfillment of all other requirements of section 221, Student E may deduct this payment of interest for Federal income tax purposes.

(c) Maximum deduction. The [amount allowed](#) as a deduction under section 221 for any [taxable year](#) may not exceed \$2,500.

(d) Limitation based on modified adjusted gross income -

(1) In general. The deduction [allowed](#) under section 221 is phased out ratably for [taxpayers](#) with [modified adjusted gross income](#) between \$50,000 and \$65,000 (\$100,000 and \$130,000 for [married individuals](#) who file a joint return). Section 221 does not allow a deduction for [taxpayers](#) with [modified adjusted gross income](#) of \$65,000 or above (\$130,000 or above for [married individuals](#) who file a joint return). See [paragraph \(d\)\(3\)](#) of this section for inflation adjustment of [amounts](#) in this paragraph (d)(1).

(2) Modified adjusted gross income defined. The term *modified adjusted gross income* means the adjusted [gross income](#) (as [defined](#) in section 62) of the [taxpayer](#) for the [taxable year](#) increased by any [amount](#) excluded from [gross income](#) under section 911, 931, or 933 (relating to [income](#) earned abroad or from certain [United States](#) possessions or Puerto Rico). [Modified adjusted gross income](#) must be determined under this section after taking into [account](#) the [inclusions](#), [exclusions](#), [deductions](#), and [limitations](#) provided by sections 86 (social security and [tier 1](#) railroad retirement benefits), 135 (redemption of qualified [United States](#) savings bonds), 137 (adoption assistance programs), 219 (deductible qualified retirement contributions), and 469 (limitation on passive [activity losses](#) and credits), but before taking into [account](#) the [deductions](#) provided by sections 221 and 222 (qualified tuition and related expenses).

(3) Inflation adjustment. For [taxable years](#) beginning after 2002, the [amounts](#) in [paragraph \(d\)\(1\)](#) of this section will be increased for inflation occurring after 2001 in accordance with section 221(f)(1). If any [amount](#) adjusted under section 221(f)(1) is not a multiple of \$5,000, the [amount](#) will be rounded to the next lowest multiple of \$5,000.

(e) Definitions -

(1) Eligible educational institution. In general, an *eligible educational institution* means any college, university, vocational school, or other postsecondary [educational institution](#) described in section 481 of the [Higher Education Act of 1965](#) ([20 U.S.C. 1088](#)), as in effect on August 5, 1997, and certified by the U.S. Department of Education as eligible to participate in [student](#) aid programs administered by the Department, as described in section 25A(f)(2) and § 1.25A-2(b). For [purposes](#) of this section, an [eligible educational institution](#) also includes an institution that conducts an internship or residency program leading to a degree or certificate awarded by an institution, a [hospital](#), or a health care [facility](#) that offers postgraduate training.

(2) Qualified higher education expenses -

(i) In general. Qualified higher education expenses means the [cost](#) of attendance (as [defined](#) in section 472 of the [Higher Education Act of 1965](#), [20 U.S.C. 1087II](#), as in effect on August 4, 1997), at an [eligible educational institution](#), reduced by the [amounts](#) described in [paragraph \(e\)\(2\)\(ii\)](#) of this section. Consistent with section 472 of the [Higher Education Act of 1965](#), a [student's cost](#) of attendance is determined by the [eligible educational institution](#) and includes tuition and [fees](#) normally assessed a [student](#) carrying the same academic workload as the [student](#), an [allowance](#) for room and board, and an [allowance](#) for books, supplies, [transportation](#), and [miscellaneous](#) expenses of the [student](#).

(ii) Reductions. Qualified higher education expenses are reduced by any [amount](#) that is paid to or on behalf of a [student](#) with respect to such expenses and that is -

(A) A qualified [scholarship](#) that is excludable from [income](#) under section 117;

(B) An educational assistance [allowance](#) for a veteran or [member](#) of the armed forces under chapter [30](#), [31](#), [32](#), [34](#) or [35](#) of title [38](#), United States Code, or under chapter 1606 of title 10, [United States Code](#);

(C) [Employer](#)-provided educational assistance that is excludable from [income](#) under section 127;

(D) Any other [amount](#) that is described in section 25A(g)(2)(C) (relating to [amounts](#) excludable from [gross income](#) as educational assistance);

(E) Any otherwise includible [amount](#) excluded from [gross income](#) under section 135 (relating to the redemption of [United States](#) savings bonds);

(F) Any otherwise includible [amount](#) distributed from a Coverdell education savings [account](#) and excluded from [gross income](#) under section 530(d)(2); or

(G) Any otherwise includible [amount](#) distributed from a qualified tuition program and excluded from [gross income](#) under section 529(c)(3)(B).

(3) Qualified education loan -

(i) In general. A *qualified education loan* means indebtedness incurred by a [taxpayer](#) solely to pay qualified higher education expenses that are -

(A) Incurred on behalf of a [student](#) who is the [taxpayer](#), the [taxpayer's spouse](#), or a [dependent](#) (as [defined](#) in section 152) of the [taxpayer](#) at the time the [taxpayer](#) incurs the indebtedness;

(B) Attributable to education provided during an academic period, as described in section 25A and the regulations thereunder, when the [student](#) is an eligible [student](#) as [defined](#) in section 25A(b)(3) (requiring that the [student](#) be a degree candidate carrying at least half the normal full-time workload); and

(C) Paid or incurred within a reasonable period of time before or after the [taxpayer](#) incurs the indebtedness.

(ii) **Reasonable period.** Except as otherwise provided in this paragraph (e) (3)(ii), what constitutes a reasonable period of time for [purposes](#) of [paragraph \(e\)\(3\)\(i\)\(C\)](#) of this section [generally](#) is determined based on all the relevant [facts and circumstances](#). However, qualified higher education expenses are treated as paid or incurred within a reasonable period of time before or after the [taxpayer](#) incurs the indebtedness if -

(A) The expenses are paid with the [proceeds](#) of education loans that are part of a Federal postsecondary education loan program; or

(B) The expenses relate to a particular academic period and the loan [proceeds](#) used to pay the expenses are disbursed within a period that begins 90 days prior to the start of that academic period and ends 90 days after the end of that academic period.

(iii) **Related party.** A qualified education loan does not include any indebtedness owed to a [person](#) who is related to the [taxpayer](#), within the meaning of section 267(b) or 707(b)(1). For [example](#), a parent or grandparent of the [taxpayer](#) is a [related person](#). In addition, a qualified education loan does not include a loan made under any qualified [employer plan](#) as [defined](#) in section 72(p)(4) or under any [contract](#) referred to in section 72(p)(5).

(iv) **Federal issuance or guarantee not required.** A loan does not have to be [issued](#) or guaranteed under a Federal postsecondary education loan program to be a qualified education loan.

(v) **Refinanced and consolidated indebtedness -**

(A) **In general.** A qualified education loan includes indebtedness incurred solely to refinance a qualified education loan. A qualified education loan includes a single, consolidated indebtedness incurred solely to refinance two or more qualified education loans of a borrower.

(B) **Treatment of refinanced and consolidated indebtedness.**
[Reserved]

(4) **Examples.** The following [examples](#) illustrate the [rules](#) of this paragraph (e):

EXAMPLE 1. ELIGIBLE EDUCATIONAL INSTITUTION.

University F is a postsecondary educational institution described in section 481 of the [Higher Education Act of 1965](#). The U.S. Department of

Education has certified that University F is eligible to participate in federal financial aid programs administered by that Department, although University F chooses not to participate. University F is an eligible educational institution.

EXAMPLE 2. QUALIFIED HIGHER EDUCATION EXPENSES.

Student G receives a \$3,000 qualified scholarship for the 2003 fall semester that is excludable from Student G's gross income under section 117. Student G receives no other forms of financial assistance with respect to the 2003 fall semester. Student G's cost of attendance for the 2003 fall semester, as determined by Student G's eligible educational institution for purposes of calculating a student's financial need in accordance with section 472 of the Higher Education Act, is \$16,000. For the 2003 fall semester, Student G has qualified higher education expenses of \$13,000 (the cost of attendance as determined by the institution (\$16,000) reduced by the qualified scholarship proceeds excludable from gross income (\$3,000)).

EXAMPLE 3. QUALIFIED EDUCATION LOAN.

Student H borrows money from a commercial bank to pay qualified higher education expenses related to his enrollment on a half-time basis in a graduate program at an eligible educational institution. Student H uses all the loan proceeds to pay qualified higher education expenses incurred within a reasonable period of time after incurring the indebtedness. The loan is not federally guaranteed. The commercial bank is not related to Student H within the meaning of section 267(b) or 707(b)(1). Student H's loan is a qualified education loan within the meaning of section 221.

EXAMPLE 4. QUALIFIED EDUCATION LOAN.

Student I signs a promissory note for a loan on August 15, 2003, to pay for qualified higher education expenses for the 2003 fall and 2004 spring semesters. On August 20, 2003, the lender disburses loan proceeds to Student I's college. The college credits them to Student I's account to pay qualified higher education expenses for the 2003 fall semester, which begins on August 25, 2003. On January 26, 2004, the lender disburses additional loan proceeds to Student I's college. The college credits them to Student I's account to pay qualified higher education expenses for the 2004 spring semester, which began on January 12, 2004. Student I's qualified higher education expenses for the two semesters are paid within a reasonable period of time, as the first loan disbursement occurred within the 90 days prior to the start of the fall 2003 semester and the second loan disbursement occurred during the spring 2004 semester.

EXAMPLE 5. QUALIFIED EDUCATION LOAN.

The facts are the same as in *Example 4* except that in 2005 the college is not an eligible educational institution because it loses its eligibility to participate in certain federal financial aid programs administered by the U.S. Department of Education. The qualification of Student I's loan, which

was used to pay for qualified higher education expenses for the 2003 fall and 2004 spring semesters, as a qualified education loan is not affected by the college's subsequent loss of eligibility.

EXAMPLE 6. MIXED-USE LOANS.

Student J signs a promissory note for a loan secured by Student J's personal residence. Student J will use part of the loan proceeds to pay for certain improvements to Student J's residence and part of the loan proceeds to pay qualified higher education expenses of Student J's spouse. Because Student J obtains the loan not solely to pay qualified higher education expenses, the loan is not a qualified education loan.

(f) Interest -

(1) In general. [Amounts](#) paid on a qualified education loan are deductible under section 221 if the [amounts](#) are [interest](#) for Federal [income](#) tax purposes. For [example](#), [interest](#) includes -

- (i) [Qualified stated interest](#) (as [defined](#) in [§ 1.1273-1\(c\)](#)); and
- (ii) [Original issue discount](#), which [generally](#) includes capitalized [interest](#). For [purposes](#) of section 221, capitalized [interest](#) means any accrued and unpaid [interest](#) on a qualified education loan that, in accordance with the [terms](#) of the loan, is added by the lender to the outstanding principal balance of the loan.

(2) Operative rules for original issue discount -

(i) In general. The [rules](#) to determine the [amount](#) of [original issue discount](#) on a loan and the [accruals](#) of the discount are in sections 163(e), 1271 through 1275, and the regulations thereunder. In general, [original issue discount](#) is the excess of a loan's [stated redemption price at maturity](#) (all [payments](#) due under the loan other than [qualified stated interest](#) payments) over its [issue price](#) (the [amount](#) loaned). Although [original issue discount generally](#) is deductible as it accrues under section 163(e) and [§ 1.163-7](#), [original issue discount](#) on a qualified education loan is not deductible until paid. See [paragraph \(f\)\(3\)](#) of this section to determine when [original issue discount](#) is paid.

(ii) Treatment of loan origination fees by the borrower. If a loan origination fee is paid by the borrower other than for [property](#) or [services](#) provided by the lender, the fee reduces the [issue price](#) of the loan, which creates [original issue discount](#) (or additional original [issuediscount](#)) on the loan in an [amount](#) equal to the fee. See [§ 1.1273-2\(g\)](#). For an [example](#) of how a loan origination fee is taken into [account](#), see [Example 2](#) of [paragraph \(f\)\(4\)](#) of this section.

(3) Allocation of payments. See [§§ 1.446-2\(e\)](#) and 1.1275-2(a) for [rules](#) on allocating [payments](#) between [interest](#) and principal. In general, these [rules](#) treat a [payment](#) first as a [payment](#) of [interest](#) to the extent of the [interest](#) that has accrued and remains unpaid as of the date the [payment](#) is due, and second as a [payment](#) of principal. The characterization of a [payment](#) as either [interest](#) or principal under these [rules](#) applies regardless of how the parties label the [payment](#) (either as [interest](#) or principal). Accordingly,

the [taxpayer](#) may deduct the portion of a [payment](#) labeled as principal that these [rules](#) treat as a [payment of interest](#) on the loan, including any portion attributable to capitalized [interest](#) or loan origination [fees](#).

(4) Examples. The following [examples](#) illustrate the [rules](#) of this paragraph [\(f\)](#). In the [examples](#), assume that the institution the [student](#) attends is an [eligible educational institution](#), the loan is a qualified education loan, the [student](#) is legally obligated to make [interest payments](#) under the [terms](#) of the loan, and any other [applicable requirements](#), if not otherwise specified, are fulfilled. The [examples](#) are as follows:

EXAMPLE 1. CAPITALIZED INTEREST.

Interest on Student K's loan accrues while Student K is in school, but Student K is not required to make any payments on the loan until six months after he graduates or otherwise leaves school. At that time, the lender capitalizes all accrued but unpaid interest and adds it to the outstanding principal amount of the loan. Thereafter, Student K is required to make monthly payments of interest and principal on the loan. The interest payable on the loan, including the capitalized interest, is original issue discount. See section 1273 and the regulations thereunder. Therefore, in determining the total amount of interest paid on the loan each taxable year, Student K may deduct any payments that [§ 1.1275-2\(a\)](#) treats as payments of interest, including any principal payments that are treated as payments of capitalized interest. See [paragraph \(f\)\(3\)](#) of this section.

EXAMPLE 2. ALLOCATION OF PAYMENTS.

The facts are the same as in *Example 1*, except that, in addition, the lender charges Student K a loan origination fee, which is not for any property or services provided by the lender. Under [§ 1.1273-2\(g\)](#), the loan origination fee reduces the issue price of the loan, which reduction increases the amount of original issue discount on the loan by the amount of the fee. The amount of original issue discount (which includes the capitalized interest and loan origination fee) that accrues each year is determined under section 1272 and [§ 1.1272-1](#). In effect, the loan origination fee accrues over the entire term of the loan. Because the loan has original issue discount, the payment ordering rules in [§ 1.1275-2\(a\)](#) must be used to determine how much of each payment is interest for federal tax purposes. See [paragraph \(f\)\(3\)](#) of this section. Under [§ 1.1275-2\(a\)](#), each payment (regardless of its designation by the parties as either interest or principal) generally is treated first as a payment of original issue discount, to the extent of the original issue discount that has accrued as of the date the payment is due and has not been allocated to prior payments, and second as a payment of principal. Therefore, in determining the total amount of interest paid on the qualified education loan for a taxable year, Student K may deduct any payments that the parties label as principal but that are treated as payments of original issue discount under [§ 1.1275-2\(a\)](#).

(g) Additional Rules -

(1) Payment of interest made during period when interest payment not required. [Payments](#) of [interest](#) on a qualified education loan to which this section is applicable are deductible even if the [payments](#) are made during a period when [interest payments](#) are not required because, for [example](#), the loan has not yet entered repayment status or is in a period of deferment or forbearance.

(2) Denial of double benefit. No deduction is [allowed](#) under this section for any [amount](#) for which a deduction is allowable under another provision of Chapter 1 of the [Internal Revenue Code](#). No deduction is [allowed](#) under this section for any [amount](#) for which an exclusion is allowable under section 108(f) (relating to [cancellation](#) of indebtedness).

(3) Examples. The following [examples](#) illustrate the [rules](#) of this paragraph [\(g\)](#). In the [examples](#), assume that the institution the [student](#) attends is an [eligible educational institution](#), the loan is a qualified education loan, and the [student](#) is legally obligated to make [interest payments](#) under the [terms](#) of the loan:

EXAMPLE 1. VOLUNTARY PAYMENT OF INTEREST BEFORE LOAN HAS ENTERED REPAYMENT STATUS.

Student L obtains a loan to attend college. The terms of the loan provide that interest accrues on the loan while Student L earns his undergraduate degree but that Student L is not required to begin making payments of interest until six full calendar months after he graduates or otherwise leaves school. Nevertheless, Student L voluntarily pays interest on the loan during 2003, while enrolled in college. Assuming all other relevant requirements are met, Student L is allowed a deduction for interest paid while attending college even though the payments were made before interest payments were required.

EXAMPLE 2. VOLUNTARY PAYMENT DURING PERIOD OF DEFERMENT OR FORBEARANCE.

The facts are the same as in *Example 2*, except that Student L makes no payments on the loan while enrolled in college. Student L graduates in June 2003 and begins making monthly payments of principal and interest on the loan in January 2004, as required by the terms of the loan. In August 2004, Student L enrolls in graduate school on a full-time basis. Under the terms of the loan, Student L may apply for deferment of the loan payments while Student L is enrolled in graduate school. Student L applies for and receives a deferment on the outstanding loan. However, Student L continues to make some monthly payments of interest during graduate school. Student L may deduct interest paid on the loan during the period beginning in January 2004, including interest paid while Student L is enrolled in graduate school.

(h) Effective date. This section is applicable to periods governed by section 221 as amended in 2001, which relates to [interest](#) paid on a qualified education loan after December 31, 2001, in [taxable years](#) ending after December 31, 2001, and on or before December 31, 2010.

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